IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NOS. 41 AND 42 OF 2006

CRIMINAL WRIT PETITION NO. 41 OF 2006

Mr. Madan Mohan Dhanuka,
of Mumbai, Indian Inhabitant,
aged about 57 years, carrying
on business at 401-402,
Raheja Centre, Nariman Point,
Mumbai-400 021. ... Petitioner

versus

The Registrar of Companies,
Goa, Daman and Diu, having
its office at Company Bhavan,
Patto-Panaji-Goa. ... Respondent

CRIMINAL WRIT PETITION NO. 42 OF 2006

Mr. Mohan Jayakar,
of Mumbai, Indian Inhabitant,
aged about 54 years, an
Advocate & Solicitor by
profession having his office
at 1301, Raheja Centre,
Nariman Point,
Mumbai - 400 021. ... Petitioner

versus

The Registrar of Companies,
Goa, Daman and Diu,
having its office at
Company Bhavan, Patto,
Panaji-Goa. ... Respondent

Mr. S. Gupte, Senior Advocate with Mr. A. Khandeparkar and Mr. A. A. S. Borkar, Advocates for the Petitioners in both the petitions.

Mr. E. P. Badrinarayan, Advocate for the Respondent in both the petitions.

CORAM: N. A. BRITTO, J.

DATE : 9TH FEBRUARY, 2007.

ORAL ORDER

Both these petitions could be disposed of by this common order.

2. Heard the learned Senior Counsel Mr. S. Gupte on behalf of the petitioners, and Mr. E. P. Badrinarayan, the learned Counsel on behalf of the respondents.

3. The petitioners are accused who have been prosecuted under Section 217(3) r/w (5) of the Companies Act, 1956. Process against the petitioners was issued by Order dated 31-10-2002. The petitioners chose not to assail the said Order issuing process against them and it can be seen that a certified copy of the said Order was applied as late as on 5-9-2005.

4. At the relevant time, the petitioners had a twofold remedy. First, by filing an application for recalling of process in terms of the Judgment of the Apex Court in the case of **K. M. Mathew** v. **State of Kerala**(1992 (1) SCC 217). Second, by filing a revision to the Court of Sessions. The petitioners did not avail of either of the said two remedies and therefore any application to condone the delay in filing revision against the said orders before the Court of Sessions would have been hopelessly time barred.

5. The petitioners' contention that they had applied for recall of the process issued against them cannot be accepted. The petitioners did file another application in February, 2002, but that was for raising a plea of limitation in terms of Section 468

(2) of the Code(Code of Criminal Procedure, 1973) and not for recall of any process. This the learned Sessions Judge failed to take note of. This application came to be dismissed by Order dated 5-9-2005.

6. The petitioners filed applications for revision before the Court of Sessions, Panaji and along with it filed applications for condonation of delay, of about two months.

7. The petitioner Madan Mohan Dhanuka sought to explain the delay of two months by stating that he was a businessman who had to frequently travel out of Mumbai to attend business meetings and conferences across the country and that the certified copy applied for, of the said Order dated 5-9-2005, was belatedly received by him from Goa and therefore prayed that the delay of two months be condoned.

8. The petitioner Mohan M. Jayakar explained the delay of two months by stating that he was an Advocate and Solicitor and Partner of M/s. Khaitan & Jayakar, Mumbai and had to frequently go out of Mumbai to attend hearings and/or appear

on behalf of his clients before various Courts and Tribunals including the Supreme Court. The petitioner Mohan M. Jayakar also stated that the certified copy of the Order dated 5-9-2005 was belatedly received by him from Goa and therefore prayed that the delay of two months be condoned.

9. The respondent did not file any reply to the applications but the applications for condonation came to be argued orally on behalf of the respondent. In dismissing the applications for condonation of delay, the learned Sessions Judge observed that the cause shown by the petitioners could not be considered as "sufficient cause" as the petitioners were represented by an Advocate who was well aware about the dismissal of the application. That was in the case of the petitioner Mohan Jayakar. In the case of petitioner Madan Dhanuka, the learned Sessions Judge stated that the cause shown could not be considered as "sufficient cause" as being a lawyer he was well aware that the revisions had to be filed within the stipulated time.

10. Before this Court on behalf of the respondent, the

matter has been left to the discretion of the Court. The expression sufficient cause has always been liberally construed and at times with justice oriented approach. Considering the cause shown, in my view, these would be fit cases to condone the delay by imposing costs of Rs.5000/- to be paid by each of the petitioners in the Office of the respondent within a period of ten days. After the said costs are paid the delay in filing revision applications against the Order dated 5-9-2005 shall stand condoned. The revision petitions shall be registered and the learned Sessions Judge is hereby directed to dispose of the said revision petitions against the Order dated 5-9-2005 in accordance with law as expeditiously as possible. As already stated no delay can be condoned for filing revisions against the Orders dated 31-10-2002 as any revisions against it are hopelessly time barred.

11. Petitions allowed on the above terms.

N. A. BRITTO, J.

RD